

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY GENE NISKALA,

Defendant-Appellant.

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UNPUBLISHED  
October 27, 2000

No. 222012  
Mackinac Circuit Court  
LC Nos. 99-002477-FC &  
99-002478-FC

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

MEMORANDUM.

Defendant pleaded guilty to two counts of third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4), and sentenced to serve two concurrent prison terms of four to fifteen years. He appeals as of right. We affirm.

Defendant argues that his four-year minimum sentences, although within the recommended minimum guidelines range of two to five years, are disproportionate in light of his advanced age (he was sixty-two years of age at sentencing), poor physical health, troubled childhood, and lack of a prior criminal record. A sentence within the sentencing guidelines is presumptively proportionate, *People v Dunham*, 220 Mich App 268, 277; 559 NW2d 360 (1996), but may constitute an abuse of sentencing discretion in unusual circumstances, *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990). Defendant's favorable plea agreement does not accurately reflect the seriousness of defendant's conduct. Defendant sexually abused a young grandchild repeatedly over a period of years and was originally charged with five counts of first-degree criminal sexual conduct. He conceded he victimized another grandchild and there was evidence that another family member may have been victimized. Given the heinous nature of the offenses committed, we conclude defendant has failed to rebut the presumption of proportionality. *People v Cotton*, 209 Mich App 82, 85; 530 NW2d 495 (1995).

Affirmed.

/s/ Richard Allen Griffin  
/s/ Mark J. Cavanagh  
/s/ Hilda R. Gage